

Title 32: PROFESSIONS AND OCCUPATIONS
Chapter 80: MONEY TRANSMITTERS AND CHECK CASHERS

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Maine Revised Statutes
Title 32: PROFESSIONS AND OCCUPATIONS
Chapter 80: MONEY TRANSMITTERS AND CHECK CASHERS

Subchapter 1: MONEY TRANSMITTERS

§6101. SHORT TITLE

This subchapter may be known and cited as the "Money Transmitters Act." [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6102. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 155, Pt. A, §2 (NEW).]

1. Administrator. "Administrator" means the Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation.

[1997, c. 155, Pt. A, §2 (NEW); 2007, c. 273, Pt. B, §6 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

2. Applicant. "Applicant" means a person filing an application for a license under this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. Authorized delegate. "Authorized delegate" means an entity designated by the licensee under the provisions of this subchapter to engage in the business of selling or issuing payment instruments or to engage in the business of transmitting money on behalf of a licensee.

[1997, c. 155, Pt. A, §2 (NEW) .]

4. Control. "Control" means ownership of, or the power to vote, 25% or more of the outstanding voting securities of a licensee or controlling person. For purposes of determining the percentage of a licensee controlled by any person, the person's interest may be aggregated with the interest of any other person controlled by the person or by any spouse, parent, or child of the person.

[1997, c. 155, Pt. A, §2 (NEW) .]

5. Controlling person. "Controlling person" means any person in control of a licensee.

[1997, c. 155, Pt. A, §2 (NEW) .]

6. Executive officer. "Executive officer" means a licensee's president, senior officer responsible for the licensee's business, chief financial officer or any other person who performs similar functions.

[1997, c. 155, Pt. A, §2 (NEW) .]

7. Key shareholder. "Key shareholder" means a person or group of persons acting in concert that is the owner of 25% or more of any voting class of an applicant's stock.

[1997, c. 155, Pt. A, §2 (NEW) .]

8. Licensee. "Licensee" means a person licensed under this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

9. Material litigation. "Material litigation" means any litigation that, according to generally accepted accounting principles, is considered significant to an applicant's or licensee's financial health and would be required to be referenced in that entity's annual audited financial statements, report to shareholders or similar documents.

[1997, c. 155, Pt. A, §2 (NEW) .]

10. Money transmission. "Money transmission" means the business of selling or issuing payment instruments or the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any means, including, but not limited to, payment instrument, wire, facsimile or electronic transfer.

[1997, c. 155, Pt. A, §2 (NEW) .]

11. Outstanding payment instrument. "Outstanding payment instrument" means a payment instrument issued by the licensee that has been sold in the United States directly by the licensee or a payment instrument issued by the licensee that has been sold by an authorized delegate in the United States, and has been reported to the licensee as having been sold, and that has not yet been paid by or for the licensee.

[1997, c. 155, Pt. A, §2 (NEW) .]

12. Payment instrument. "Payment instrument" means a check, draft, money order, travelers check or other instrument or written order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable. The term does not include a credit card voucher, a letter of credit or any instrument that is redeemable by the issuer in goods or services.

[1997, c. 155, Pt. A, §2 (NEW) .]

13. Person. "Person" means an individual, partnership, association, joint-stock association, limited liability company, trust or corporation.

[1997, c. 155, Pt. A, §2 (NEW) .]

14. Remit. "Remit" means either to make direct payment of the funds to the licensee or its representatives authorized to receive those funds, or to deposit the funds in a bank, credit union or savings and loan association or other similar financial institution in an account specified by the licensee.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §6 (REV). 2007, c. 695, Pt. A, §47 (AFF).

§6103. LICENSE REQUIRED

1. License required. On or after January 1, 1998, a person, except one exempt pursuant to section 6104, may not engage in the business of money transmission without a license as provided in this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Single license; multiple locations. A licensee may conduct business in this State at one or more locations, directly or indirectly owned, or through one or more authorized delegates, or both, pursuant to the single license granted to the licensee, subject to the registration requirements of section 6109.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6104. EXEMPTIONS

1. Exemptions. This subchapter does not apply to:

A. The United States or any department, agency, or instrumentality of the United States; [1997, c. 155, Pt. A, §2 (NEW).]

B. The United States Post Office; [1997, c. 155, Pt. A, §2 (NEW).]

C. The State or any political subdivisions of the State; [1997, c. 155, Pt. A, §2 (NEW).]

D. Supervised financial organizations as defined in Title 9-A, section 1-301, subsection 38-A as long as they do not engage in the business of issuing or selling payment instruments through authorized delegates who are not supervised financial organizations as defined in Title 9-A, section 1-301, subsection 38-A; and [2001, c. 371, §13 (AMD).]

E. The provision of electronic transfer of government benefits for any federal, state or county governmental agency as defined in Federal Reserve Board Regulation E, by a contractor for and on behalf of the United States or any department, agency or instrumentality of the United States, or any state or any political subdivisions of a state. [1997, c. 155, Pt. A, §2 (NEW).]

[2001, c. 371, §13 (AMD) .]

2. Delegates of a licensee. Authorized delegates of a licensee, acting within the scope of authority conferred by a written contract as described in section 6118, are not required to obtain a license pursuant to this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW). 2001, c. 371, §13 (AMD).

§6105. LICENSE QUALIFICATIONS

1. Net worth requirements. A licensee under this subchapter must have at all times a net worth of not less than \$100,000, calculated in accordance with generally accepted accounting principles. Licensees engaging in money transmission at more than one location or through authorized delegates must have an additional net worth of \$50,000 per location or agent located in the State, up to a maximum of \$500,000.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Corporate applicants. A corporate applicant, at the time of filing an application for a license under this subchapter and at all times after a license is issued, must be in good standing in the state of its incorporation. A noncorporate applicant, at the time of filing an application for a license under this subchapter and at all times after a license is issued, must be registered or qualified to do business in this State.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6106. LICENSE APPLICATION

An application for a license under this subchapter must be in writing, under oath and in a form prescribed by the administrator. [1997, c. 155, Pt. A, §2 (NEW).]

1. All applicants. For all applicants, the application must include:

A. The exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of its business and the location of the applicant's business records; [1997, c. 155, Pt. A, §2 (NEW).]

B. The history of the applicant's material litigation and criminal convictions for the 5-year period prior to the date of the application; [1997, c. 155, Pt. A, §2 (NEW).]

C. A description of the activities conducted by the applicant and a history of operations; [1997, c. 155, Pt. A, §2 (NEW).]

D. A description of the business activities in which the applicant seeks to be engaged in the State; [1997, c. 155, Pt. A, §2 (NEW).]

E. A list identifying the applicant's proposed authorized delegates in the State, if any, at the time of the filing of the license application; [1997, c. 155, Pt. A, §2 (NEW).]

F. A sample authorized delegate contract, if applicable; [1997, c. 155, Pt. A, §2 (NEW).]

G. A sample form of payment instrument, if applicable; [1997, c. 155, Pt. A, §2 (NEW).]

H. The locations at which the applicant and its authorized delegates, if any, propose to conduct the licensed activities in the State; and [1997, c. 155, Pt. A, §2 (NEW).]

I. The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which the payment instruments will be payable. [1997, c. 155, Pt. A, §2 (NEW).]

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Corporate applicants. In addition to the information required by subsection 1, if the applicant is a corporation, the applicant must provide:

A. The date of the applicant's incorporation and state of incorporation; [1997, c. 155, Pt. A, §2 (NEW).]

B. A certificate of good standing from the state in which the applicant was incorporated; [1997, c. 155, Pt. A, §2 (NEW).]

C. A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded on any stock exchange; [1997, c. 155, Pt. A, §2 (NEW).]

D. The name, business and residence addresses, and employment history for the past 5 years of the applicant's executive officers and the officers or managers who will be in charge of the applicant's activities to be licensed; [1997, c. 155, Pt. A, §2 (NEW).]

E. The name, business and residence addresses and employment history for the period 5 years prior to the date of the application of any key shareholder of the applicant; [1997, c. 155, Pt. A, §2 (NEW).]

F. The history of material litigation and criminal convictions for the 5-year period prior to the date of the application of every executive officer or key shareholder of the applicant; [1997, c. 155, Pt. A, §2 (NEW).]

G. A copy of the applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position, and, if available, the applicant's audited financial statements for the immediately preceding 2-year period. With the approval of the administrator, if the applicant is a wholly owned subsidiary of another corporation, the applicant may submit either the parent corporation's consolidated audited financial statements for the current year and for the immediately preceding 2-year period or the parent corporation's Form 10K reports filed with the United States Securities and Exchange Commission for the prior 3 years in lieu of the applicant's financial statements. With the approval of the administrator, if the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's non-United States regulator may be submitted to satisfy this provision; and [1997, c. 155, Pt. A, §2 (NEW).]

H. Copies of all filings, if any, made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States within the year preceding the date of filing of the application. [1997, c. 155, Pt. A, §2 (NEW).]

[1997, c. 155, Pt. A, §2 (NEW) .]

3. Noncorporate applicants. In addition to the information required by subsection 1, if the applicant is not a corporation, the applicant must provide:

A. The name, business and residence addresses, personal financial statement and employment history for the past 5 years of each principal of the applicant and the name, business and residence addresses and employment history for the past 5 years of any other person or persons who will be in charge of the applicant's activities to be licensed; [1997, c. 155, Pt. A, §2 (NEW).]

B. The place and date of the applicant's registration or qualification to do business in this State; [1997, c. 155, Pt. A, §2 (NEW).]

C. The history of material litigation and criminal convictions for the 5-year period prior to the date of the application for each individual having an ownership interest in the applicant and each individual who exercises supervisory responsibility with respect to the applicant's activities; and [1997, c. 155, Pt. A, §2 (NEW).]

D. Copies of the applicant's audited financial statements, including balance sheet, statement of income or loss and statement of changes in financial position for the current year and, if available, for the immediately preceding 2-year period. [1997, c. 155, Pt. A, §2 (NEW).]

[1997, c. 155, Pt. A, §2 (NEW) .]

The administrator is authorized, for good cause shown, to waive any requirement of this section with respect to any license application or to permit a license applicant to submit substituted information in its license application in lieu of the information required by this section. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6107. BOND OR OTHER SECURITY DEVICE

1. Bond or other security device required. Each application must be accompanied by a surety bond, irrevocable letter of credit or other similar security device, referred to in this section as a "security device," in the amount of \$100,000. The security device must be in a form satisfactory to the administrator and must run to the administrator for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission and payment of money in connection with the sale and issuance of payment instruments and transmission of money. In the case of a bond, the aggregate liability of the surety may not exceed the principal sum of the bond. Any claim against the bond or security device may be the subject of an administrative hearing and order pursuant to section 6121.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Deposit in lieu of security device. In lieu of a security device or of any portion of the principal of the security device, as required by this section, the licensee may deposit with the administrator, or with such banks in this State as the licensee may designate and the administrator may approve, cash, interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality of the United States, or guaranteed by the United States, or of this State, or of a city, county, town, village, school district or instrumentality of this State, or guaranteed by this State, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the security device or portion of the security device. The securities or cash must be deposited as and held to secure the same obligations as would the security device, but the depositor is entitled to receive all interest and dividends on the security device, has the right, with the approval of the administrator, to substitute other securities for those deposited, and is required to do so on written order of the administrator made for good cause shown.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. Cancellation. The security device remains in effect until cancellation, which may occur only after 30 days' written notice to the administrator. Cancellation does not affect any liability incurred or accrued during that period.

[1997, c. 155, Pt. A, §2 (NEW) .]

4. Five-year limit. The security device remains in place for 5 years after the licensee ceases money transmission operations in the State. Notwithstanding this provision, the administrator may permit the security device to be reduced or eliminated prior to that time to the extent that the amount of the licensee's payment instruments outstanding in this State are reduced. The administrator may also permit a licensee to substitute a letter of credit or other form of security device acceptable to the administrator for the security device in place at the time the licensee ceases money transmission operations in the State.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6108. APPLICATION FEE

Each application must be accompanied by a nonrefundable application fee in the amount of \$500. The application fee also constitutes the license fee for the applicant's first year of activities if the license is granted. In addition, the application must be accompanied by a registration fee of \$50 for each authorized delegate designated by the licensee, up to a maximum of \$2,500. [1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6109. ISSUANCE OF LICENSE

1. Investigation. Upon the filing of a complete application, the administrator shall investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant. The administrator may conduct an on-site investigation of the applicant, the reasonable cost of which must be paid by the applicant. If the administrator finds that the applicant's business will be conducted honestly, fairly and in a manner commanding the confidence and trust of the community, that the applicant has fulfilled the requirements imposed by this subchapter and that the applicant has paid the required license fee, the administrator shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in this State for a term of one year. If these requirements have not been met, the administrator shall deny the application in writing that states the reasons for the denial.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Timely review. The administrator shall approve or deny every application for an original license within 120 days from the date a complete application is submitted, unless the administrator extends the period for good cause. The administrator shall notify the applicant of the date when the application is considered complete.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. Appeal of license denial. An applicant aggrieved by a denial issued by the administrator under this section may at any time within 30 days from the date of receipt of written notice of the denial contest the denial by serving a response on the administrator. The administrator shall set a date for a hearing not later than 60 days after service of the response, unless a later date is set with the consent of the aggrieved applicant.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6110. RENEWAL OF LICENSE AND ANNUAL REPORT

1. Renewal fee. A renewal application must be accompanied by a nonrefundable application fee in the amount of \$250, plus a registration fee of \$50 for each authorized delegate designated by a licensee, up to a maximum of \$2,500.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Annual report. The renewal fee must be accompanied by a report in a form prescribed by the administrator. The form must be sent by the administrator to each licensee no later than 3 months immediately preceding the date established by the administrator for license renewal. The licensee must include the following in its annual renewal report:

A. A copy of its most recent audited annual financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder's equity and statement of changes in financial position. With the approval of the administrator, in the case of a licensee that is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited annual financial statement; [1997, c. 155, Pt. A, §2 (NEW) .]

B. For the most recent quarter for which data are available prior to the date of the filing of the renewal application, but in no event more than 120 days prior to the renewal date, the number of payment instruments sold by the licensee in the State, the dollar amount of those instruments and the dollar amount of those instruments currently outstanding; [1997, c. 155, Pt. A, §2 (NEW).]

C. Any material changes to any of the information submitted by the licensee on its original application that have not previously been reported to the administrator on any other report required to be filed under this subchapter; and [1997, c. 155, Pt. A, §2 (NEW).]

D. A list of the locations within this State at which business regulated by this subchapter is being conducted by either the licensee or its authorized delegate. [1997, c. 155, Pt. A, §2 (NEW).]

The administrator is authorized, for good cause shown, to waive any requirement of this subsection with respect to any renewal application or to permit a renewal applicant to submit substituted information in its renewal application in lieu of the information required by this subsection.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. Suspension. A licensee that has not filed a renewal report or paid its renewal fee by the renewal filing deadline and has not been granted an extension of time to do so by the administrator must be notified by the administrator, in writing, that its license is suspended. At the licensee's request, the suspension may be stayed, and a hearing will be scheduled, at which time the licensee will be required to show cause why its license should not be suspended pending compliance with these requirements.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6111. EXTRAORDINARY REPORTING REQUIREMENTS

1. Written report. Within 15 days of the occurrence of any one of the events listed below, a licensee shall file a written report with the administrator describing the event and its expected impact on the licensee's activities in the State:

A. The filing for bankruptcy or reorganization by the licensee; [1997, c. 155, Pt. A, §2 (NEW) .]

B. The institution of revocation or suspension proceedings against the licensee by any state or governmental authority with regard to the licensee's money transmission activities; [1997, c. 155, Pt. A, §2 (NEW) .]

C. A felony indictment of the licensee or any of its executive officers or directors related to money transmission activities; or [1997, c. 155, Pt. A, §2 (NEW) .]

D. A felony conviction of the licensee or any of its executive officers or directors related to money transmission activities. [1997, c. 155, Pt. A, §2 (NEW) .]

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6112. CHANGES IN CONTROL OF A LICENSEE

Within 15 days of a change or acquisition of control of a licensee, the licensee shall provide notice of the event to the administrator in writing and in such form as the administrator may prescribe, and with such information, data and records as the administrator may require. The administrator may waive this notification requirement if, in the administrator's discretion, the change in control does not pose any risk to the interests of the public. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6113. EXAMINATIONS

1. On-site examination. The administrator may conduct an annual on-site examination of a licensee. The licensee shall pay all necessarily incurred costs of the examination. The on-site examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Financial data. The administrator may request financial data from a licensee in addition to the data required under section 6110, subsection 2, or conduct an on-site examination of any authorized delegate or location of a licensee within this State. When the administrator examines an authorized delegate's operations, the authorized delegate shall pay all necessarily incurred costs of the examination. When the administrator examines a licensee's location, the licensee shall pay all necessarily incurred costs of the examination.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6114. MAINTENANCE OF RECORDS

1. Schedule. Each licensee shall make, keep and preserve the following books, accounts and other records for a period of 3 years:

A. A record or records of each payment instrument sold; [1997, c. 155, Pt. A, §2 (NEW) .]

B. A general ledger posted at least monthly containing all assets, liability, capital, income and expense accounts; [1997, c. 155, Pt. A, §2 (NEW) .]

C. Settlement sheets received from authorized delegates; [1997, c. 155, Pt. A, §2 (NEW) .]

D. Bank statements and bank reconciliation records; [1997, c. 155, Pt. A, §2 (NEW) .]

E. Records of outstanding payment instruments; [1997, c. 155, Pt. A, §2 (NEW) .]

F. Records of each payment instrument paid within the 3-year period; and [1997, c. 155, Pt. A, §2 (NEW) .]

G. A list of the names and addresses of all of the licensee's authorized delegates. [1997, c. 155, Pt. A, §2 (NEW) .]

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Electronic form. Maintenance of the documents as required by this section in a photographic, electronic or other similar form constitutes compliance with this section.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. Location. With the approval of the administrator, records may be maintained at a location outside this State so long as they are made accessible to the administrator on 7 days' written notice.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6115. CONFIDENTIALITY OF DATA SUBMITTED TO THE ADMINISTRATOR

1. Financial information. Financial information not normally available to the public that is submitted in confidence by an individual or organization to comply with licensing, registration or other regulatory functions of the administrator is confidential.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Aggregate data. Nothing in this section prohibits the administrator from releasing to the public a list of persons licensed under this subchapter or from releasing aggregated financial data on such licensees.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6116. SUSPENSION OR REVOCATION OF LICENSES

After notice and hearing, the administrator may suspend or revoke a licensee's license if the administrator finds that: [1997, c. 155, Pt. A, §2 (NEW) .]

1. Grounds for denial. A fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying the application;

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Inadequate net worth. The licensee's net worth becomes inadequate and the licensee, after 10 days' written notice from the administrator, fails to take such steps as the administrator determines necessary to remedy the deficiency;

[1997, c. 155, Pt. A, §2 (NEW) .]

3. Violations. The licensee knowingly violates any material provision of this subchapter or any rule or order validly promulgated by the administrator under authority of this subchapter;

[1997, c. 155, Pt. A, §2 (NEW) .]

4. Safety and soundness. The licensee is conducting its business in an unsafe or unsound manner;

[1997, c. 155, Pt. A, §2 (NEW) .]

5. Insolvency. The licensee is insolvent;

[1997, c. 155, Pt. A, §2 (NEW) .]

6. Failure to meet obligations. The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors or has admitted in writing its inability to pay its debts as they become due;

[1997, c. 155, Pt. A, §2 (NEW) .]

7. Bankruptcy. The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement or other relief under any bankruptcy;

[1997, c. 155, Pt. A, §2 (NEW) .]

8. Refusal of examination. The licensee refuses to permit the administrator to make an examination authorized by this subchapter;

[1997, c. 155, Pt. A, §2 (NEW) .]

9. Failure to respond. The licensee fails to promptly and adequately respond to communications from the administrator; or

[1997, c. 155, Pt. A, §2 (NEW) .]

10. Failure to file report. The licensee willfully fails to make a report required by this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6117. AUTHORIZED DELEGATE CONTRACTS

A licensee desiring to conduct licensed activities through authorized delegates shall authorize each delegate to operate pursuant to an express written contract. Contracts entered into after the effective date of this subchapter must provide the following: [1997, c. 155, Pt. A, §2 (NEW).]

1. Appointment. That the licensee appoints the person as its delegate with authority to engage in money transmission on behalf of the licensee;

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Authorization for subdelegates. That neither a licensee nor an authorized delegate may authorize subdelegates without the written consent of the administrator; and

[1997, c. 155, Pt. A, §2 (NEW) .]

3. Regulation. That licensees are subject to supervision and regulation by the administrator.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6118. AUTHORIZED DELEGATE CONDUCT

1. Misrepresentation. An authorized delegate may not make any fraudulent or false statement or misrepresentation to a licensee or to the administrator.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Written procedures. All money transmission or sale or issuance of payment instrument activities conducted by authorized delegates must be strictly in accordance with the licensee's written procedures provided to the authorized delegate.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. Remittance. An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate. The failure of an authorized delegate to remit all money owing to a licensee within the time presented results in liability of the authorized delegate to the licensee for 3 times the licensee's actual damages. The administrator may set, by rule, the maximum remittance time.

[1997, c. 155, Pt. A, §2 (NEW) .]

4. Inspection. An authorized delegate is deemed to consent to the administrator's inspection, with or without prior notice to the licensee or authorized delegate, of the books and records of the authorized delegate when the administrator has a reasonable basis to believe that the licensee or authorized delegate is in noncompliance with this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

5. Duty to act. An authorized delegate is under a duty to act only as authorized under the contract with the licensee and an authorized delegate that exceeds its authority is subject to cancellation of its contract and further disciplinary action by the administrator.

[1997, c. 155, Pt. A, §2 (NEW) .]

6. Commingling funds. All funds, less fees, received by an authorized delegate from the sale or delivery of a payment instrument issued by a licensee or received by an authorized delegate for transmission must, from the time the funds are received by the authorized delegate until the funds or an equivalent amount are remitted by the authorized delegate to the licensee, constitute trust funds owned by and belonging to the licensee. If an authorized delegate commingles any such funds with any other funds or property owned or controlled by the authorized delegate, all commingled proceeds and other property are impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

[1997, c. 155, Pt. A, §2 (NEW) .]

7. Theft or loss of payment instruments. An authorized delegate shall report to the licensee the theft or loss of payment instruments within 24 hours from the time the licensee knew or should have known of the theft or loss.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6119. REVOCATION OR SUSPENSION OF AUTHORIZED DELEGATES

1. Suspension. The administrator may issue an order suspending or barring an authorized delegate from continuing to be or barring a person from becoming an authorized delegate of any licensee during the period for which the order is in effect. Upon issuance of the order, the licensee shall terminate its relationship with the authorized delegate according to the terms of the order. Orders may be issued if, after notice and a hearing, the administrator finds that any authorized delegate of a licensee or any administrator, officer, employee or controlling person of the authorized delegate:

A. Has violated a provision of this subchapter or of any rule or order issued under this subchapter; [1997, c. 155, Pt. A, §2 (NEW).]

B. Has engaged in or participated in an unsafe or unsound act with respect to the business of selling or issuing payment instruments of the licensee or the business of money transmission; or [1997, c. 155, Pt. A, §2 (NEW).]

C. Has made or caused to be made in any application or report filed with the administrator or in any proceeding before the administrator a statement that was, at the time and in the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact that is required to be stated in an application or report. [1997, c. 155, Pt. A, §2 (NEW).]

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Modification of order. An authorized delegate to whom an order is issued under this section may apply to the administrator to modify or rescind the order. The administrator may not grant the application unless the administrator finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when such person is permitted to resume being or to become an authorized delegate, comply with all applicable provisions of this subchapter and of any rule and order issued under this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. Judicial review. The right of a person to whom an order is issued under this section to petition for judicial review of an order is not affected by the failure of the person to apply to the administrator to modify or rescind the order.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6120. LICENSEE LIABILITY

Except in cases of gross negligence or intentional acts that result in harm to a person, a licensee's responsibility to a person for a money transmission conducted on that person's behalf by the licensee or the licensee's authorized delegate is limited to the amount of money transmitted or the face amount of the payment instrument purchased. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6121. HEARINGS; PROCEDURES

The provisions of the Maine Administrative Procedure Act apply to any hearing conducted pursuant to this subchapter. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6122. CIVIL PENALTIES

1. Civil penalty. If, after notice and hearing, the administrator finds that a person has intentionally violated this subchapter or a rule adopted under this subchapter, the administrator may order the person to pay to the administrator a civil penalty in an amount specified by the administrator, not to exceed \$1,000 for each violation or, in the case of a continuing violation, \$1,000 for each day that the violation continues. A proceeding may not be initiated and a penalty may not be assessed pursuant to this section until after the person has been notified in writing of the nature of the violation, has been afforded a reasonable period of time, as set forth in the notice, to correct the violation and has failed to do so.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Settlement. The administrator, in the exercise of the administrator's reasonable judgment, is authorized to compromise or settle with and collect civil penalties and other costs from any person for violations of any provision of this subchapter, or of any rule or order issued pursuant to this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6123. ENFORCEMENT

1. Court order. If it appears to the administrator that any person has committed or is about to commit a violation of any provision of this subchapter or of any rule or order of the administrator, the administrator may, after notice and hearing, issue a cease and desist order, and may apply to the Superior Court or District Court for an order enjoining that person from violating or continuing to violate this subchapter or any rule or order and for injunctive or such other relief as the nature of the case may require.

[1997, c. 155, Pt. A, §2 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

2. Consent agreements. The administrator may enter into consent orders at any time with any person to resolve any matter arising under this subchapter. A consent order must be signed by the person to whom it is issued or a duly authorized representative, and must indicate agreement to the terms contained in the order. A consent order is not required to constitute an admission by any person that any provision of this subchapter, or any rule or order issued under this subchapter has been violated, and is not required to constitute a finding by the administrator that the person has violated any provision of this subchapter or any rule or order or issued under this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. Civil or criminal penalties. Notwithstanding the issuance of a consent order, the administrator may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order, unless the consent order by its terms expressly precludes the administrator from doing so.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

§6124. CRIMINAL PENALTIES

1. Willful violation. A person who knowingly and willfully violates any provision of this subchapter for which a penalty is not specifically provided is guilty of a civil infraction.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. False statements. A person who knowingly and willfully makes a material, false statement in any document filed or required to be filed under this subchapter with the intent to deceive the recipient of the document is guilty of a Class E crime.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. Unlicensed persons. A person who knowingly and willfully engages in the business of money transmission without a license as provided in this subchapter is guilty of a Class E crime.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6125. ADOPTION OF RULES

Rules adopted by the administrator pursuant to this subchapter are routine technical rules, pursuant to Title 5, chapter 375, subchapter II-A. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6126. DESIGNATION OF AGENT FOR SERVICE OF PROCESS

An applicant shall designate and maintain an agent in this State for service of process. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6127. MULTIPLE LICENSES

A person licensed under this subchapter is not required to obtain a separate license to engage in either the cashing of checks or the exchange of foreign currency in the State. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6128. TREATMENT OF FEES

The aggregate of fees, examination expense reimbursements and other payments made under this subchapter is appropriated for the use of the administrator. Any balances of funds do not lapse but must be carried forward to be expended for the same purposes in the following fiscal year. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6129. EFFECTIVE DATE

This subchapter is effective on January 1, 1998. Every person engaged in activities within this State encompassed by this subchapter at the time of the subchapter's adoption, except those persons already licensed under former section 891 in this State, shall file an application in accordance with the provisions of this subchapter within 3 months after the date this subchapter becomes effective. Those persons already licensed under former section 891 in this State must file an application for a renewal license pursuant to this subchapter within 3 months after the date this subchapter becomes effective. A person is not deemed to be in violation of this subchapter for operating without a license if the person files an application within the 3-month period, until the application is denied. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

Subchapter 2: CHECK CASHING AND FOREIGN CURRENCY EXCHANGE

§6131. SHORT TITLE

This subchapter may be known and cited as the "Check Cashing and Foreign Currency Exchange Act." [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6132. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 155, Pt. A, §2 (NEW).]

1. Administrator. "Administrator" means the Superintendent of Consumer Credit Protection.

[1997, c. 155, Pt. A, §2 (NEW); 2007, c. 273, Pt. B, §6 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

2. Applicant. "Applicant" means a person filing an application for a license under this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. Capital adequacy. "Capital adequacy" means that an applicant is financially sound and has liquid assets useable in the business of at least \$10,000, computed according to generally accepted accounting principles, for the full term of the registration.

[1997, c. 155, Pt. A, §2 (NEW) .]

4. Check. "Check" means any check, draft, money order or other instrument for the transmission or payment of money. "Check" does not include a travelers check.

[1997, c. 155, Pt. A, §2 (NEW) .]

5. Check cashing business. "Check cashing business" means any person who engages in the business of cashing checks for a fee. "Check cashing business" does not include any of the following:

- A. A supervised financial organization; [1997, c. 155, Pt. A, §2 (NEW).]
- B. A supervised lender; [1997, c. 155, Pt. A, §2 (NEW).]
- C. A licensee under the Money Transmitters Act; or [1997, c. 155, Pt. A, §2 (NEW).]
- D. A person who is primarily engaged in the business of selling tangible personal property or services at retail and does not derive more than 5% of its income from check cashing. [1997, c. 155, Pt. A, §2 (NEW).]

[1997, c. 155, Pt. A, §2 (NEW) .]

6. Foreign currency exchange business. "Foreign currency exchange business" means a person who engages in the business of exchanging foreign currency for a fee. "Foreign currency exchange business" does not include any of the following:

- A. A supervised financial organization; [1997, c. 155, Pt. A, §2 (NEW).]
- B. A licensee under the Money Transmitters Act; or [1997, c. 155, Pt. A, §2 (NEW).]
- C. A person who is primarily engaged in the business of selling tangible personal property or services at retail and does not derive more than 5% of that person's income from foreign currency exchange. [1997, c. 155, Pt. A, §2 (NEW).]

[1997, c. 155, Pt. A, §2 (NEW) .]

7. Identification. "Identification" means, and is limited to, an unexpired and otherwise valid drivers license; a state identification card issued by any state of the United States or its territories or the District of Columbia showing a photograph and signature; a United States government resident alien identification card; a United States passport; or a United States military identification card.

[1997, c. 155, Pt. A, §2 (NEW) .]

8. Person. "Person" means an individual, partnership, association, joint-stock association, limited liability company, trust or corporation.

[1997, c. 155, Pt. A, §2 (NEW) .]

9. Registrant. "Registrant" means a person registered under this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §6 (REV). 2007, c. 695, Pt. A, §47 (AFF).

§6133. REGISTRATION REQUIRED

1. Registration. On or after January 1, 1998, a person except one exempt pursuant to section 6132, subsection 5 or 6, may not engage in the business of check cashing or foreign currency exchange without registering as provided in this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Additional locations. A registrant may conduct its business in this State at one or more locations, directly or indirectly owned, or through one or more authorized delegates, subject to the additional requirements set forth in section 6137.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6134. APPLICATION

An application for registration must be in writing and under oath to the administrator, in such form as the administrator may prescribe. The application must include the following information: [1997, c. 155, Pt. A, §2 (NEW).]

1. Name and residence. The legal name and residence and business addresses of the applicant, if the applicant is a natural person, or, if the applicant is a partnership, association, or corporation, the name of every partner, officer, or administrator of the applicant;

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Location. The location of the principal office of the applicant;

[1997, c. 155, Pt. A, §2 (NEW) .]

3. Other locations. The complete address of any other locations at which the applicant proposes to engage in the activities regulated by this subchapter; and

[1997, c. 155, Pt. A, §2 (NEW) .]

4. Other information. Such other information as the administrator may reasonably require with respect to the applicant.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6135. REGISTRATION STANDARDS

1. Investigation. Upon the filing of an application for registration, the administrator shall investigate the applicant with respect to:

A. The business records and the capital adequacy of the person seeking the registration; [1997, c. 155, Pt. A, §2 (NEW).]

B. The competence, experience, integrity and financial ability of any individual who:

- (1) Is a director, officer or supervisory employee of the business; or
- (2) Owns or controls the business; and [1997, c. 155, Pt. A, §2 (NEW).]

C. The record of the applicant or of any person referenced in paragraph B with respect to:

- (1) Any criminal activity;
- (2) Any fraud or other act of personal dishonesty;
- (3) Any act, omission or practice that constitutes a breach of a fiduciary duty; or
- (4) Any suspension or removal, by any agency or department of the United States or any state, from participation in the conduct of any federally or state-licensed or regulated business. [1997, c. 155, Pt. A, §2 (NEW).]

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Grounds for denial. If the investigation under subsection 1 results in findings that the applicant is not properly qualified to conduct business under this subchapter, those findings are grounds for denial of the application.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6136. REGISTRATION TERM; RENEWAL

1. Effective registrations. Registration pursuant to this subchapter remains effective through the remainder of the calendar year of its date of issuance, unless sooner surrendered, suspended or revoked.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Annual renewal. Registrations must be renewed annually, in such form as the administrator may prescribe.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6137. FEES

The application and each renewal application must be filed with a nonrefundable fee of \$250, together with a fee of \$100 for each additional business location of the applicant. The aggregate of all fees, including those provided for by this section and in section 6140, is appropriated for the use of the administrator. Any balance of the funds does not lapse but must be carried forward to be expended for the same purposes in the following fiscal year. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6138. LIMITATIONS

1. Endorsement. Before a registrant may deposit, with any financial institution, a payment instrument that is cashed by a registrant, the item must be endorsed with the actual name under which the registrant is doing business.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Compliance with state and federal law. Registrants must comply with all the laws of this State and any federal laws.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. Display of certificate of registration. The administrator may require each check cashing business and foreign currency exchange business to display its registration certificate in its place of business.

[1997, c. 155, Pt. A, §2 (NEW) .]

4. Prohibited activities. A check cashing business may not:

A. Charge fees, except as otherwise provided by this subchapter, in excess of 5% of the face amount of the payment instrument, or 6% without the provision of identification, or \$5, whichever is greater; [1997, c. 155, Pt. A, §2 (NEW).]

B. Charge fees in excess of 3% of the face amount of the payment instrument, or 4% without the provision of identification, or \$5, whichever is greater, if the payment instrument is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of the payment instrument; [1997, c. 155, Pt. A, §2 (NEW).]

C. Charge fees for personal checks or money orders in excess of 10% of the face amount of those payment instruments, or \$5, whichever is greater; [1997, c. 155, Pt. A, §2 (NEW).]

D. Cash or advance any money on a postdated check; [1997, c. 155, Pt. A, §2 (NEW).]

E. Agree to hold a check or draft for later deposit; [1997, c. 155, Pt. A, §2 (NEW).]

F. Issue any check or draft without concurrently receiving the full principal amount in cash or its equivalent; or [1997, c. 155, Pt. A, §2 (NEW).]

G. Engage in any false or misleading advertising. [1997, c. 155, Pt. A, §2 (NEW).]

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6139. RECORDS OF CHECK CASHING AND FOREIGN CURRENCY EXCHANGE BUSINESS

1. Maintenance of records. A registrant shall maintain all books, accounts, records and documents necessary to determine the registrant's compliance with the provisions of this subchapter. Books, accounts, records and documents must be retained for a period of at least 3 years.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Location of records. The records required to be maintained may be maintained by the registrant at any location, so long as the registrant notifies the administrator, in writing, of the location of the records in its application or otherwise. The registrant shall make such records available to the administrator for examination and investigation in this State within 7 days after receipt of a written request.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. Expiration of retention period. Registrants and authorized vendors are not required to preserve or retain any of the records required by this section or copies of those records for a period longer than 3 years unless a longer period is expressly required by the laws of this State or any federal law. A registrant or authorized vendor may destroy any of its records or copies after the expiration of the retention period required by this section.

[1997, c. 155, Pt. A, §2 (NEW) .]

4. Electronic storage. The original of any record of a registrant includes the data or other information comprising a record stored or transmitted in or by means of any electronic, computerized, mechanized or other information storage or retrieval or transmission system or device that can upon request generate, regenerate or transmit the precise data or other information comprising the records. An original also includes the visible data or other information so generated, regenerated, or transmitted if it is legible or can be made legible by enlargement or other process.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6140. EXAMINATIONS

1. Examination. The administrator may examine the books, accounts and records of an applicant or registrant and make investigations to determine compliance with this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Expenses. The expenses of the administrator necessarily incurred in the examination or investigation of any applicant or registrant are chargeable to that person.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6141. REPORTING REQUIREMENTS

A registrant under this subchapter shall: [1997, c. 155, Pt. A, §2 (NEW).]

1. Disclose to administrator. Disclose to the administrator the fees charged to consumers for services regulated by this subchapter; and

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Disclose to public. Conspicuously disclose to the public, at each business location, the fees charged to consumers for its services.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6142. SUSPENSION OR REVOCATION OF REGISTRATION

After notice and hearing, the administrator may suspend or revoke a registrant's registration if the administrator finds that: [1997, c. 155, Pt. A, §2 (NEW) .]

1. Grounds for denial. A fact or condition exists that, if it had existed at the time when the registrant applied for its registration, would have been grounds for denying the application;

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Inadequate net worth. The registrant's net worth becomes inadequate and the registrant, after 10 days' written notice from the administrator, fails to take such steps as the administrator determines necessary to remedy the deficiency;

[1997, c. 155, Pt. A, §2 (NEW) .]

3. Violation. The registrant knowingly violates a material provision of this subchapter or a rule or order validly adopted by the administrator under authority of this subchapter;

[1997, c. 155, Pt. A, §2 (NEW) .]

4. Safety and soundness. The registrant is conducting its business in an unsafe or unsound manner;

[1997, c. 155, Pt. A, §2 (NEW) .]

5. Insolvency. The registrant is insolvent;

[1997, c. 155, Pt. A, §2 (NEW) .]

6. Failure to meet obligations. The registrant has suspended payment of its obligations, made an assignment for the benefit of its creditors, or admitted in writing its inability to pay its debts as they become due;

[1997, c. 155, Pt. A, §2 (NEW) .]

7. Bankruptcy. The registrant has applied for an adjudication of bankruptcy, reorganization, arrangement or other relief under any bankruptcy;

[1997, c. 155, Pt. A, §2 (NEW) .]

8. Refusal of examination. The registrant refuses to permit the administrator to make an examination authorized by this subchapter;

[1997, c. 155, Pt. A, §2 (NEW) .]

9. Failure to respond. The registrant fails to promptly and adequately respond to communications from the administrator; or

[1997, c. 155, Pt. A, §2 (NEW) .]

10. Failure to report. The registrant willfully fails to make a report required by this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6143. PENALTIES

1. Criminal penalty. A person who carries on a business regulated by this subchapter without a valid registration is guilty of a Class E crime.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. Civil penalty. A registrant who fails to comply with a provision of this subchapter is subject to a civil action in which a court may assess a penalty not to exceed \$5,000 or actual damages, whichever is greater.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6144. ADOPTION OF RULES

Rules adopted under this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6145. DESIGNATION OF AGENT FOR SERVICE OF PROCESS

An applicant must designate and maintain an agent in this State for service of process. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6146. PRIVACY OF CONSUMER FINANCIAL INFORMATION

A check cashing business or foreign currency exchange business shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001), if the

check cashing business or foreign currency exchange business is a financial institution as defined in those regulations. This section is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24. [2001, c. 262, Pt. E, §2 (NEW).]

SECTION HISTORY

2001, c. 262, §E2 (NEW).

Subchapter 3: CASH-DISPENSING MACHINES ESTABLISHED BY NONBANKS

§6151. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1999, c. 229, §2 (NEW).]

1. Administrator. "Administrator" means the Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation.

[1999, c. 229, §2 (NEW); 2007, c. 273, Pt. B, §6 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

2. Cash-dispensing machine. "Cash-dispensing machine" means an electronic device that, operating in conjunction with a processor and network, allows a customer to debit an account in exchange for dispensing cash and that may allow a customer to effectuate account transfers subject to the limitations of section 6152. It does not include a satellite facility operated by a financial institution or service corporation, a point-of-sale terminal or a consumer-owned and consumer-operated personal computer terminal.

[1999, c. 229, §2 (NEW) .]

3. Establish. "Establish" means to own, lease or otherwise legally control.

[1999, c. 229, §2 (NEW) .]

4. Financial institution. "Financial institution" means any financial institution as defined in Title 9-B, section 131, subsection 17; any credit union as defined in Title 9-B, section 131, subsection 12; or any bank, commercial bank, savings bank, trust company, building and loan association, savings and loan association, savings association, cooperative bank, credit union or similar banking or credit union organization chartered by any other state or by the Federal Government.

[1999, c. 229, §2 (NEW) .]

5. Network. "Network" means a person who engages primarily in the establishment and maintenance of a computer-operated system for transmitting items and messages between financial institutions, processors and cash-dispensing machines or similar electronic devices.

[1999, c. 229, §2 (NEW) .]

6. Operator. "Operator" means the person who owns, leases or otherwise legally controls a cash-dispensing machine and is responsible for registering the cash-dispensing machine.

[1999, c. 229, §2 (NEW) .]

7. Person. "Person" means an individual, partnership, corporation or other business association recognized under state law.

[1999, c. 229, §2 (NEW) .]

8. Processor. "Processor" means a person who electronically acquires financial data emanating from a cash-dispensing machine and relays that data to a network.

[1999, c. 229, §2 (NEW) .]

9. Satellite facility. "Satellite facility" means a satellite facility as defined in Title 9-B, section 131, subsection 35.

[1999, c. 229, §2 (NEW) .]

10. Service corporation. "Service corporation" means a service corporation, as defined in Title 9-B, section 131, subsection 37, owned by one or more financial institutions.

[1999, c. 229, §2 (NEW) .]

11. Servicing agent. "Servicing agent" means a person who contracts with an operator to provide customer relations, financial recordkeeping or similar services in regard to a cash-dispensing machine.

[1999, c. 229, §2 (NEW) .]

SECTION HISTORY

1999, c. 229, §2 (NEW). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §6 (REV). 2007, c. 695, Pt. A, §47 (AFF).

§6152. ESTABLISHMENT OF CASH-DISPENSING MACHINES; LIMITATIONS

1. Cash-dispensing machines. A person may not establish or operate a cash-dispensing machine unless that person has first complied with the provisions of this subchapter.

[1999, c. 229, §2 (NEW) .]

2. Limitations. A cash-dispensing machine:

A. May not accept deposits or loan payments or effectuate account transfers other than those transfers between the customer's accounts in the same financial institution; and [1999, c. 229, §2 (NEW) .]

B. Must be operated in such a way as to comply with the Electronic Funds Transfer Act, 15 United States Code, Section 1693 et seq. or regulations adopted under that Act. [1999, c. 229, §2 (NEW) .]

[1999, c. 229, §2 (NEW) .]

SECTION HISTORY

1999, c. 229, §2 (NEW) .

§6153. REGISTRATION

1. Initial operation; notice. Prior to the date of the initial operation of any cash-dispensing machine, the operator shall provide the following information to the administrator for the purpose of registering the cash-dispensing machine:

A. An initial notice that includes:

- (1) The operator's name, address and telephone number;
- (2) The name and address of where the cash-dispensing machine is to be located;
- (3) The anticipated date of the initial operation of the cash-dispensing machine;

- (4) The types of transactions available;
- (5) The processor's name, address and telephone number;
- (6) The servicing agent's name, address and telephone number;
- (7) The name, title, address and telephone number of the person completing the notice; and
- (8) Any other information required by the administrator; and [1999, c. 229, §2 (NEW).]

B. A registration fee of \$50 for the first cash-dispensing machine location and \$25 for each additional location, payable to the Treasurer of State. [1999, c. 229, §2 (NEW).]

[1999, c. 229, §2 (NEW).]

2. Annual notice; fee. After filing an initial notice, as required by subsection 1, the operator shall provide annually, no later than January 31st, to the administrator a notice and registration fee in accordance with subsection 1, paragraphs A and B.

[1999, c. 229, §2 (NEW).]

3. Notification of change. The operator shall promptly notify the administrator in writing:

A. Of any changes to the information required under subsection 1, paragraph A; or [1999, c. 229, §2 (NEW).]

B. If the operation of the cash-dispensing machine is terminated. [1999, c. 229, §2 (NEW).]

[1999, c. 229, §2 (NEW).]

4. Verification. The administrator may, at any time, verify the completeness and accuracy of any required notice under this section.

[1999, c. 229, §2 (NEW).]

5. Violation; inadequate documentation. The operator is in violation of this section if the operator fails to promptly provide adequate documentation to and upon request of the administrator or if the documentation is determined to be incomplete or inaccurate. The administrator shall inform the operator of any such failure or discrepancy under this subsection and shall inform the operator of the penalty established in accordance with subsection 6.

[1999, c. 229, §2 (NEW).]

6. Fine. The administrator may impose a fine of \$5 per day on any person failing to comply with the requirements of this section.

[1999, c. 229, §2 (NEW).]

SECTION HISTORY

1999, c. 229, §2 (NEW).

§6154. REQUIRED DISCLOSURES TO CUSTOMERS

1. Disclosure of pertinent information. An operator shall clearly and conspicuously disclose on a sign posted on the cash-dispensing machine or in clear view of a customer viewing the cash-dispensing machine:

A. The name of the operator; [1999, c. 229, §2 (NEW).]

B. A disclaimer indicating that the operator is not a financial institution or a credit union; [1999, c. 229, §2 (NEW).]

C. The name, address and 24-hour toll-free telephone number where a customer may direct inquiries or complaints; [1999, c. 1, §45 (COR).]

D. A statement that the Bureau of Consumer Credit Protection is responsible for the operator's compliance with state law and the address and telephone number of the bureau; and [1999, c. 229, §2 (NEW); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF).]

E. That a fee may be assessed by the operator. [1999, c. 229, §2 (NEW).]

[1999, c. 1, §45 (COR); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

2. Fees imposed. Any operator may not charge a fee for use of a cash-dispensing machine unless the amount of the fee is clearly and conspicuously disclosed electronically during the course of the transaction in a manner that permits the customer to cancel the transaction without incurring the fee.

[1999, c. 229, §2 (NEW) .]

3. Receipt for transaction. A cash-dispensing machine must provide a receipt for the transaction that must include the following information in a clear and conspicuous manner:

A. The amount of the transaction; [1999, c. 229, §2 (NEW).]

B. The amount of any fee imposed by the operator; [1999, c. 229, §2 (NEW).]

C. The total amount debited to the customer's account, including any fee imposed by the operator; [1999, c. 229, §2 (NEW).]

D. The date and time of the transaction; [1999, c. 229, §2 (NEW).]

E. A number or code that identifies the customer and the account accessed; and [1999, c. 229, §2 (NEW).]

F. The location of the cash-dispensing machine. [1999, c. 229, §2 (NEW).]

[1999, c. 229, §2 (NEW) .]

SECTION HISTORY

RR 1999, c. 1, §45 (COR). 1999, c. 229, §2 (NEW). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §5 (REV). 2007, c. 695, Pt. A, §47 (AFF).

§6155. EFFECTS OF VIOLATIONS ON RIGHTS OF PARTIES

1. Violation of subchapter; unfair practices; civil penalty. An operator that violates any provision of this subchapter or any rule adopted by the administrator or that through any unfair, unconscionable or deceptive practice causes actual damage to a customer, is subject to the following:

A. Examination and investigation pursuant to section 6156; [1999, c. 229, §2 (NEW).]

B. After notice and hearing, a cease and desist order from the administrator; [1999, c. 229, §2 (NEW).]

C. A civil action by the administrator through the Attorney General after which a court may assess a civil penalty of not more than \$5,000; and [1999, c. 229, §2 (NEW).]

D. Revocation, suspension or nonrenewal of the operator's registration pursuant to section 6157. [1999, c. 229, §2 (NEW).]

[1999, c. 229, §2 (NEW) .]

2. Penalty. A person who establishes a cash-dispensing machine pursuant to this subchapter without having filed notice with the administrator is guilty of a Class E crime.

[1999, c. 229, §2 (NEW) .]

SECTION HISTORY

1999, c. 229, §2 (NEW).

§6156. EXAMINATION OF BOOKS, ACCOUNTS AND RECORDS

1. Compliance. The administrator may examine the cash-dispensing machines, books, accounts and records of an operator or servicing agent and make investigations to determine compliance with this subchapter.

[1999, c. 229, §2 (NEW) .]

2. Chargeable expenses. The expenses of the administrator incurred in the examination or investigation of any operator or servicing agent are chargeable to the operator required to file notice under this subchapter.

[1999, c. 229, §2 (NEW) .]

SECTION HISTORY

1999, c. 229, §2 (NEW).

§6157. SUSPENSION OR REVOCATION OF REGISTRATION

After notice and hearing, the administrator may suspend or revoke an operator's registration if the administrator finds that: [1999, c. 229, §2 (NEW) .]

1. Violation. The operator knowingly violated a provision of this subchapter or a rule or order adopted by the administrator pursuant to this subchapter;

[1999, c. 229, §2 (NEW) .]

2. Refusal to permit examination or pay exam fees. The operator or servicing agent refused to permit the administrator to make an examination authorized by this subchapter or refused to reimburse the administrator for the expenses of an examination;

[1999, c. 229, §2 (NEW) .]

3. Failure to respond. The operator failed to promptly and adequately respond to requests from the administrator; or

[1999, c. 229, §2 (NEW) .]

4. Failure to submit notice. The operator willfully failed to submit a notice required by this subchapter.

[1999, c. 229, §2 (NEW) .]

SECTION HISTORY

1999, c. 229, §2 (NEW).

§6158. TREATMENT OF FEES

The aggregate of fees, examination expense reimbursement and other payments made pursuant to this subchapter are appropriated for the use of the administrator. Any balances of the funds do not lapse but must be carried forward to be expended for the same purposes in the following fiscal year. [1999, c. 229, §2 (NEW).]

SECTION HISTORY

1999, c. 229, §2 (NEW).

§6159. RULEMAKING

The administrator may adopt reasonable rules for the implementation and administration of this subchapter. Rules adopted pursuant to this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1999, c. 229, §2 (NEW).]

SECTION HISTORY

1999, c. 229, §2 (NEW).

§6160. EXCLUSIONS

This subchapter does not apply to any cash-dispensing machine established by a financial institution or service corporation. [1999, c. 229, §2 (NEW).]

SECTION HISTORY

1999, c. 229, §2 (NEW).

§6161. EFFECTIVE DATE

This subchapter takes effect January 31, 2000. [1999, c. 229, §2 (NEW).]

SECTION HISTORY

1999, c. 229, §2 (NEW).

§6162. PRIVACY OF CONSUMER FINANCIAL INFORMATION

A cash-dispensing machine operator shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001), if the cash-dispensing machine operator is a financial institution as defined in those regulations. This section is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24. [2001, c. 262, Pt. E, §3 (NEW).]

SECTION HISTORY

2001, c. 262, §E3 (NEW).

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